

Civil Writ Petition No. 252(M/B)/2003

Sadhu Ram Verma and others Petitioners

Versus

State of Uttaranchal and others Respondents

Hon'ble Irshad Hussain, J.

Hon'ble M.M. Ghildiyal, J.

(Delivered by Hon'ble Irshad Hussain J.)

By means of this writ petition the petitioners have prayed for a writ or order or direction in the nature of certiorari quashing the impugned Government Order dated 26th April 2002, Annexure-4 and also for a writ in the nature of mandamus restraining the respondents from interfering in their business of petty diesel dealer and to renew their licences.

Counter and rejoinder affidavits have been exchanged. Heard Sri Rajendra Singh learned counsel for the petitioners and Sri S.Dhuliya learned Additional Advocate General.

Put briefly the facts of the case are that the petitioners were issued licences as petty diesel dealers under the provisions of U.P. High Speed Diesel Oil And Light Diesel Oil (Maintenance Of Supplies And Distribution) Order, 1981 (hereinafter referred to as 'Control Order'); that the licences of the petitioners were to be renewed from the month of April 2003 and they accordingly applied for renewal before the date of expiry of their respective licences i.e. 31.3.2003, vide Annexures 2-A, 2-B, 2-C, 2-D, 2-E, 2-F, 2-G and 2-H respectively to the writ petition; that the licences were not renewed and the petitioners were informed that in view of Government order dated 26th April 2002 a restriction has been imposed on establishment of business of petty diesel dealer within a radius of 8 kilometers of a retail out-let of an oil company on a national high-way in the plains and within a radius of 25 kilometers in the hill area; that the said Government order further provide that petty diesel dealers are required to be attached to a particular retail out-let established by an oil company which will supply diesel for sale to the petty diesel dealer and they are not entitled to purchase diesel from any other retail out-let; that clause 16 sub-

clause (6) of the 'Control Order' is the only provision wherein the State Government can issue any directions which are consistent with the 'Control Order'; and that the restrictions imposed by the impugned Government Order as such are arbitrary, violative of Article 19 (1) (g) of the Constitution of India and are not saved by its clause (6).

On behalf of the respondents the plea taken in the counter affidavit is that the Government is fully competent to issue an order as per requirement and geographical conditions of the State and since the petitioners did not fulfil the requisite conditions for valid licence as laid down by the Government Order in question their licences were not renewed; and that the Government Order in question is fully in accordance with law and also consistent with the provisions of the 'Control Order'.

At the outset it needs to be mentioned that the provision under which the State Government can issue any direction is clause 16(6) of the 'Control Order' which reads as below:-

“(6)Every dealer shall comply with the general or special directions no inconsistent with this order that may be given to him in writing by the State Government, the Commissioner, Food and Civil Supplies or the Collector for the purpose of giving effect to the Provisions of this Order and any contravention of such directions Shall be deemed to be a contravention of this Order.”

Learned counsel for the petitioners submitted that under the above provisions of the 'Control Order' directions which are not inconsistent with the 'Control Order' can be issued by the State Government, Commissioner or the Collector and since the control order does not prohibit either expressly or by implication, grant of petty diesel licence to a person within a radius of eight kilometers in the plains and within a radius of twenty five kilometers in the hill area from a retail out-let established by an oil company, the prohibition so made, as a direction No.2 in the impugned Government Order dated 26th April 2002 is inconsistent with and is contrary to the provisions of the 'Control Order'. Learned counsel further argued that the direction that the petty diesel dealer shall be attached for maintenance and ; supply of diesel to a particular diesel out-let established by an oil company is also contrary to the provisions of 'Control Order' and as such could not be legally maintained. In support of the submission learned counsel place reliance on the decision of the Apex Court in the

matter of *State of U.P. and others versus Daulat Ram Gupta*; (2002) 4 Supreme court Cases 98.

In a group of appeals before the Apex Court the question for consideration was as to whether the State Government or the Licensing Authority can issue direction for refusal of renewal of licences granted to petty dealers under the U.P. High Speed Diesel Oil And Light Diesel Oil (Maintenance Of Supplies And Distribution) Order, 1981 if their places of business are within a radius of five kilometers of retail out-let run by a Government Oil Company. The distance restriction of five kilometers was imposed in relation to petty diesel dealers and grant of licence to them under the provisions of the 'Control Order' by a Government order dated 4-1-2001 which had in fact superseded earlier similar Government order and legality of the restrictions was challenged and the matter went up to the Apex Court which upheld the contention of the aggrieved petty dealers that such a direction or restriction was not legally permissible under sub-clause (6) of clause 16 of the U.P. High Speed Diesel Oil And Light Diesel Oil (Maintenance of Supplies And Distribution) Order, 1981. The Apex Court held that :-

“It is, therefore, manifest from the provisions of the Statutory Order that insofar as conditions of grant of licence for sale of diesel oil and its renewal are concerned, the Statutory Order is a complete code in itself and there is no provision in the Statutory Order under which a Licensing Authority could refuse to renew a licence if the licensee's place of business falls within a radius of 5 km of a government-run retail outlet.”

It was further observed that “the power to issue directions is derived from clause 16(6) of the Statutory Order, and a delegate on whom such a power is conferred is required to act within the framework of the authority conferred by the Statutory Order. Since the impugned direction issued by the Licensing Authority in the present case is not in conformity with the provisions of the Statutory Order, it must be held to be inconsistent to the provisions of the Statutory Order.....The conditions of grant of licence and its renewal are the essential features of the Statutory Order and in guise of issuing directions, the State Government or a Licensing Authority cannot

supplant the provisions of the Statutory Order, but can supplement it only with a view to give effect to the provisions of the Statutory Order. The State Government or the Licensing Authority is not authorized to amend the Statutory Order by issuing directions. In the present case the Licensing Authority while issuing the impugned direction has, in fact, purported to amend the conditions of renewal of the licence granted under the Statutory Order which was not permissible under clause 16(6) of the Statutory Order.”

The distance restrictions have also been imposed by the impugned order dated 26th April 2002 and on the basis of the above analogy and the principle laid down it has to be held that the restrictions No.2 of the impugned order could not have been given effect to, while considering the renewal of the licences of the petitioners by the respondents- licensing authority. As regards the other condition that the petty diesel dealer is required to be attached to a particular diesel outlets established by an oil company, the same can not be said to be in-consistent with the provisions of the ‘Control Order’ as the direction is intended to maintain supply and distribution of un-adulterated diesel oil to the consumers. If a petty dealer is attached to a single diesel outlet of an oil company the quality of the commodity could conveniently be checked and maintained by the authorities concerned. We find no force in the submission of the learned counsel for the petitioners that this requirement could create a monopoly in favour of a particular diesel outlet of an oil company. In the other words the direction as such is in exercise of the power to give effect to the provisions of the ‘Control Order’ and to fulfil the object behind the ‘Control Order’.

For the above reasons this writ petition partly succeed and is to be allowed accordingly. The direction No.2 contained in the impugned Government Order dated 26th April 2002 is quashed and the respondent-Licensing Authority is directed to renew the licences of the petitioners in accordance with the ‘Control Order’ at the earliest.

Dated: 13.8.2003
ISB

(Irshad Hussain, J.) (M.M.Ghildiyal,J.)